FILE COPY

Office - Supreme Court, U. S.
FILED
JAN 22 1945
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 400

CHARLESTON FEDERAL & SAVINGS LOAN ASSOCIATION, FIRST FEDERAL SAVINGS & LOAN ASSOCIATION, WEST VIRGINIA BUILDING & LOAN ASSOCIATION, and EMPIRE FEDERAL SAVINGS & LOAN ASSOCIATION, *Appellants,*

vs.

GEORGE P. ALDERSON, State Tax Commissioner of West Virginia, *Appellee.*

BRIEF ON BEHALF OF APPELLEE

IRA J. PARTLOW,
Attorney General of West Virginia.

KENNETH E. HINES,
Assistant Attorney General,

Counsel for Appellee.

JARRETT PRINTING COMPANY, CHARLESTON, W. VA.

SUBJECT INDEX

OPINIONS BELOW ---------- 1

JURISDICTION ---------- 1

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED ---------- 2

STATEMENT OF THE CASE ---------- 2

Inaccuracies, mistakes and erroneous assumptions in brief of appellants ---------- 4

Findings of fact by Supreme Court of Appeals of West Virginia ---------- 5

SUMMARY OF ARGUMENT ---------- 6

ARGUMENT ---------- 7

The appeal should be dismissed for want of jurisdiction ---------- 7

Property for the purpose of taxation may be classified and different methods adopted for valuation of different classes without violating the Fourteenth Amendment of the Constitution of the United States ---------- 8

The finding of the court below is amply supported by the evidence that no showing of "clear and intentional discrimination" is disclosed in this case between the property of appellants and other species or types of property ---------- 12

CONCLUSION ---------- 16

TABLE OF CASES CITED

Fox v. *Standard Oil Company*, 294 U. S. 87, 79 L. Ed. 780 8

In Re: Tax Assessments Against Hancock County Federal Savings & Loan Association, 125 W. Va. 426, 25 S. E. (2d) 543 ..... 8, 10

In Re: Tax Assessment Against Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association and Empire Savings & Loan Association, 126 W. Va. 506, 30 S. E. (2d) 513, (R. 314-329) 1, 2, 5, 9, 11

In the Matter of Thomas E. Williams, Tax Commissioner, 277 U. S. 268, 272, 72 L. Ed. 877, 879 7

Magnolia Bank v. *Board of Supervisors of Pike County*, 111 Miss. 857, 72 So. 697, 3 A. L. R. 1365, 248 U. S. 546, 63 L. Ed. 414, 29 Sup. Ct. Rep. 135 8

Nashville, Chattanooga & St. Louis Railway v. *Browning*, 310 U. S. 362, 84 L. Ed. 1254 ..... 9, 11

Snowden v. *Hughes*, 88 L. Ed. (Adv. Op.) 347, 352 15

Southwest Oil Company v. *Texas*, 217 U. S. 115, 54 L. Ed. 688 9

Sunday Lake Iron Co. v. *Wakefield*, 247 U. S. 350, 62 L. Ed. 1154 ..... 11, 13

Zucht v. *King*, 260 U. S. 174, 67 L. Ed. 194 7

TABLE OF STATUTES CITED

CONSTITUTION OF THE UNITED STATES:
Fourteenth Amendment ----------6
Fourteenth Amendment, Section 1
(Appendix to appellants' brief, page 36)-------2

CONSTITUTION OF WEST VIRGINIA:
Article X, Section 1 (Appendix to appellants'
brief pages 34 to 36) ----------2, 8, 9

MICHIE'S CODE OF WEST VIRGINIA:
Chapter 11, Article 3, Section 1 (Appendix to
appellants' brief, pages 31 to 34) ----------2
Chapter 11, Article 3, Section 14a (Appendix to
appellants' brief, pages 31 to 34) 2, 6, 7, 9, 10, 11, 16

U. S. C. A., Title 28, Section 344 (a)
Judicial Code, Section 237 (a) ----------1

TEXTS CITED

Brannon, on the Fourteenth Amendment
pp. 323, 324, 325, 339 ----------9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 400

CHARLESTON FEDERAL SAVINGS & LOAN ASSOCIATION, FIRST FEDERAL SAVINGS & LOAN ASSOCIATION, WEST VIRGINIA BUILDING & LOAN ASSOCIATION, and EMPIRE FEDERAL SAVINGS & LOAN ASSOCIATION, *Appellants,*

VS.

GEORGE P. ALDERSON, State Tax Commissioner of West Virginia, *Appellee.*

BRIEF ON BEHALF OF APPELLEE

OPINIONS BELOW

The opinion of the Supreme Court of Appeals of West Virginia is reported in 126 W. Va. 506, 30 S. E. (2d) 513, and is printed in the record at pages 314 to 329.

JURISDICTION

The jurisdiction of this court is invoked pursuant to section 237(a) of the Judicial Code, 28 U.S.C.A., section 344(a). Upon consideration of motion to dismiss and statement against jurisdiction timely filed by appellee,

this Court on October 16, 1944, ordered that jurisdiction be reserved or postponed to the hearing on the merits (R. 337).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Sections 1 and 14a, Article 3, Chapter 11 of Michie's Code of West Virginia, 1943, are contained in appendix of brief filed on behalf of appellants at pages 31 to 34.

Article X, Section 1 of the Constitution of West Virginia is contained in appendix of appellant's brief at pages 34 to 36.

Section 1 of the Fourteenth Amendment to the Constitution of the United States is contained in appendix of appellants' brief at page 36.

STATEMENT OF THE CASE

The procedure, issues and how decided, and a general statement of facts are contained in the written opinion of the Supreme Court of Appeals (R. 315-316), and in the brief of appellants, pages 2 to 11. In addition thereto, the following facts are shown by the record:

The intangible property of small loan companies in Kanawha County were valued and assessed for the year 1941 at 85% of the face value of their outstanding notes. (Wilkinson Exhibits Nos. 6-9, R. 63-68, 223-226.) These companies do a "small loan" business limited to $300.00, with individuals, taking as security generally, indorsements, liens upon automobiles, household furniture and personal property. They also take "signature loans" without any security, which loans are payable in small monthly payments (R. 92, 93, 159, 167). 85% of the face value of these notes owned by small loan companies represents generally the true and actual value

thereof, which value was ascertained and based upon conferences and detailed study and was agreed upon by the representatives of small loan companies and the State Tax Department of West Virginia (R. 158, 159, 168). This true and actual value was likewise "developed from an examination of numerous accounts of several small loan companies" by representatives of the Tax Department (R. 166). In the latter part of 1940 shortly before the assessment date in the instant case a sale of the assets of one small loan company to another was consummated in Kanawha County, the purchase price being 87% of the face value of the notes (R. 171).

Money is assessed in Kanawha County at its true and actual value (R. 57). Class I property of state and national banks for the years 1940 and 1941 in Kanawha County was valued and assessed without permitting any discount in making such assessments (R. 141).

Specific instances of the valuation for assessment purposes of real estate in Kanawha County at more than cost value or purchase value for the year 1940 and previous years is disclosed (Van Verth Exhibits Nos. 1-4, R. 172-174, 295-299). Such assessments were obtained from the land records of Kanawha County during the hearing of this case before the County Court of Kanawha County sitting as a board of review and equalization, the witness working on this matter a part of one day (R. 175).

Appellants may have listed their properties prior to 1941 at a 30% discount of their true and actual value as stated in appellants' brief, but many of the properties of like kind and character in the same group or class, namely, building and loan associations situate in Kanawha County, were assessed at a higher value, some at more than their true and actual value for the year 1940 (R. 128-131, 134, 135, Krueger Exhibits Nos. 2-13, R. 160-164, 278, 295).

The greater part of the property belonging to appellants consists of loans evidenced by notes, secured by first liens upon improved real estate, the amount of which loans generally do not exceed 50% to 60% of the value of such real estate as determined by appellants' appraisers (R. 77, 78, 96, 97, 100). Such state and federal associations are organized, regulated and examined under the supervision of agencies of the state or federal government and are required to maintain certain reserves (R. 86, 95, 104-106, 113, 114). The true and actual value of investment shares or stock of appellants exclusive of reserves and undivided profits, is always 100 cents on the dollar (R. 75-76, 82, 84, 85, 95). Each investor or purchaser of shares or stock from appellants, or either of them, is protected and insured against loss by federal agency up to an amount not to exceed $5,000.00 (R. 95).

Inaccuracies, Mistakes and Erroneous Assumptions in Brief of Appellants

Counsel for appellants assume that the Assessor of Kanawha County, in valuing other species or types of property for the purpose of taxation, deducted 30% of the true and actual value of such properties. The record discloses that the assessor, in valuing notes, open accounts, bonds, household goods, livestock, real estate, and other species of property, allowed generally a percentage deduction (approximately 30%) of the face value, book value, purchase value or cost value in order to arrive at true and actual value for assessment purposes (R. 58, 59, 60, 62). Such official did not allow a 30% deduction of true and actual value. On the contrary, the deduction allowed by him was to arrive at or determine what he believed to be the true and actual value.

Counsel likewise assume that there has been a deliberate and intentional discrimination against appellants in the assessment of their property for the year 1941, not-

withstanding the fact that the Supreme Court of Appeals of West Virginia expressly found to the contrary.

The instruction of the Tax Commissioner (R. 159, 276-278) sent to all assessors throughout the State of West Virginia in 1941 did not instruct "the assessors, in effect, to discontinue this practice of allowing a 30% minimum discount or deduction, in calculating and determining the assessment of building and loan associations," as stated in appellants' brief page 6. The evidence does not disclose that a deduction of 30% was allowed as a minimum to every taxpayer who had property in Class I or had been so allowed for many years, and was allowed to all building and loan associations as assumed in appellants' brief on pages 5, 6 and 7.

Findings of Fact by Supreme Court of Appeals of West Virginia

The written opinion of the court below discloses that it found, among other things, the following facts:

(1) A clear showing of discrimination "is not established where the showing is only that other property of a different type is assessed at less than its apparent or face value, through a process of estimation, and in a good faith effort to arrive at the true and actual value thereof." (Syl. 3, R. 314.)

(2) The business of appellants is subject to rigid and constant supervision of the state or federal government, or both, and their solvency at all times is a mandatory requirement to do business, and such group or class of properties is clearly distinguishable from the ordinary or general class or group of notes and accounts as a whole. (R. 321, 323.)

(3) The evidence does not disclose that Class I intangible property in Kanawha County for the year 1941

was assessed at less than its true and actual value. (R. 323).

(4) The discount as to intangibles was not allowed from the true and actual value, but was allowed from face value in an effort to reach true and actual value. Such effort by the Assessor of Kanawha County may have been erroneous or improper, but mistake or error in judgment in this respect is not sufficient to establish discrimination (R. 323, 324).

SUMMARY OF ARGUMENT

1. Appellants admit that Section 14a, Article 3, Chapter 11 of the Code of West Virginia is valid and constitutional but complain that, in administering such statute, the Assessor of Kanawha County has discriminated against appellants in such a way as to deny them equal protection of the laws. The question is not of that character which entitles appellants to a review by this court on appeal. It can be reviewed only on certiorari.

2. It is conclusively shown that appellants' property is not overvalued for assessment purposes. No contention is made that appellants' property is singled out and valued differently for assessment purposes, pursuant to Section 14a, Article 3, Chapter 11 of the Code of West Virginia, from the property of like associations or corporations of the same class, by reason whereof no substantial federal question is presented. Property for the purpose of taxation may be classified and different methods adopted for valuation of each class without violating the Fourteenth Amendment of the Constitution of the United States.

3. Assuming (but not admitting) that there has been an unlawful administration of statutes fair on their faces as between the property of appellants and other species or types of property as contended by appellants,

such administration thereof is not a denial of equal protection unless there is also disclosed an element of purposeful or intentional discrimination, which discrimination is never presumed. The finding of the court below is amply supported by the evidence that no showing of "clear and intentional discrimination" is disclosed in this case.

ARGUMENT

The appeal should be dismissed for want of jurisdiction.

Appellants in their brief (pages 4, 13, 21) concede that Section 14a, Article 3, Chapter 11 of the Code of West Virginia is valid and constitutional. The only question raised in appellants' brief (see pages 11, 13, 21) is that in administering such statute the Assessor of Kanawha County has discriminated against appellants.

This court does not have jurisdiction to consider such question upon appeal. In addition to the holding on this question in the case of *Zucht* v. *King*, 260 U. S. 174, 67 L. Ed. 194, quoted on pages 10 and 11 in the statement of appellee against jurisdiction, the following is noted in a later opinion of this court:

> "* * * But a judgment of a state court sustaining a tax alleged to be illegal because there has been discrimination in assessing property, can be reviewed only on certiorari. Jett Bros. Distilling Co. v. Carrollton, 252 U. S. 1, 5, 64 L. ed. 421, 423, 40 Sup. Ct. Rep. 255. This is true whether it was the determination of a state or local assessing body, or, as in the case at bar, of both combined, which is alleged to have produced the discrimination. Baker v. Druesedow, 263 U. S. 137, 68 L. ed. 212, 44 Sup. Ct. Rep. 40."
>
> In the matter of Thomas E. Williams, Tax Commissioner, 277 U. S. 268, 272, 72 L. ed. 877, 879.

The same question of discrimination which is alleged in this case arose in the Mississippi case of *Magnolia Bank* v. *Board of Supervisors of Pike County*, 111 Miss. 857, 72 So. 697, 3 A.L.R. 1365. Upon error (appeal) from the Supreme Court of the State of Mississippi to this Court, the appeal was dismissed for want of jurisdiction. See 248 U. S. 546, 63 L. Ed. 414, 29 Sup. Ct. Rep. 135.

We respectfully submit that the appeal heretofore granted should be dismissed for want of jurisdiction.

Property for the purpose of taxation may be classified and different methods adopted for valuation of different classes without violating the Fourteenth Amendment of the Constitution of the United States.

It is stated in the case of *In Re Tax Assessments Against Hancock County Federal Savings and Loan Association*, 125 W. Va. 426, 25 S. E. (2d) 543, that "The value of any class of property is under the constitution 'to be ascertained as directed by law'."

The right of the legislature to prescribe a method of ascertaining the value of different classes of property, which applies equally and uniformly throughout the State of West Virginia to such class, is not only directed by Article X, Section 1 of the Constitution of West Virginia, but has been fully recognized by the courts and by the legislature of the state. The legislature has provided different methods of ascertaining the value of certain classes of property, as fully disclosed in the opinion of the court below (R. 318). In the case of *Fox* v. *Standard Oil Company*, 294 U. S. 87, 79 L. Ed. 780, the following is observed at page 790 of 79 L. Ed.:

> " • • • The view was expressed that the standard of uniformity under the constitution of the state was substantially the same as the standard of equality under the Fourteenth Amendment of the constitution of the nation.

"Not finding that the courts of West Virginia have spoken on the subject differently, we reach the same conclusion now * * *."

See also opinion of Court below (Syl. 1, R. 314, 318, 319).

The allegation of appellants that the decisions of the court below is violative of Article X, Section 1, of the Constitution of West Virginia is a local question and does not present for review in this Court a Federal question. *Southwest Oil Company* v. *Texas*, 217 U. S. 115, 54 L. Ed. 688; *Nashville, Chattanooga & St. Louis Railway* v. *Browning*, 310 U. S. 362, 84 L. Ed. 1254.

It is well settled that, pursuant to the Fourteenth Amendment, the states may classify property for taxation and may set up different modes of valuation for each group or class. This power of the state is limited to the extent only that its classifications and methods of valuation shall be applied impartially to all the constituents of a class, so that the statute shall operate equally and uniformly upon all persons in similar circumstances. See generally Brannon on The Fourteenth Amendment, pp. 323, 324, 325, 339.

The property of a building and loan association is unquestionably of a distinctive class, and of a peculiar nature, as held by the court below (R. 327). The legislature had the right and power to classify and prescribe the method of ascertaining the value of its property for taxation purposes. This the legislature did by its enactment of Code 11-3-14a. The assessor, by applying the method of valuation prescribed in said section, ascertained the value of the personal property of appellants for the year in question, for taxation purposes. It is a matter of common knowledge that there are a large number of building and loan associations located in the State of West Virginia. It will be presumed that the

assessors of the various counties in which building and loan associations are situate performed their official duty and ascertained the value of the personal property of building and loan associations for taxation purposes, in accordance with the statute. The Assessor of Kanawha County valued the properties of appellants for taxation purposes for the year 1941, pursuant to the instruction of the State Tax Commissioner, which instruction is in accord with the statute (Code, 11-3-14a) as later interpreted and construed by the Supreme Court of Appeals of West Virginia in the case of *In Re Tax Assessments Against Hancock Federal Savings and Loan Association, supra.*

Appellants do not contend that the assessment for 1941 exceeds the true and actual value of their property. No claim is made that appellants' property is singled out and valued differently for assessment, pursuant to statute (Code, 11-3-14a) from the property of like associations of the same class. On the contrary, the presumption arises that the assessors throughout the State followed the instructions of the tax commissioner as given to them (R. 159, 276-278).

> " • • • It must be emphasized that the Company makes no claim that its property is singled out from among other public service corporations for discrimination. Its asserted grievance is common to the whole class. We must put to one side therefore all those cases relied on by the petitioner which invoked the Fourteenth Amendment against discriminations invidious to a particular taxpayer. • • • All these cases are inapposite. None denied power to a State to apply different yardsticks to different classes of property. • • •
>
> "That the States may classify property for taxation; may set up different modes of assessment, valuation and collection; may tax some

> kinds of property at higher rates than others; and in making all these differentiations may treat railroads and other utilities with that separateness which their distinctive characteristics and functions in society made appropriate—these are among the common-places of taxation and of constitutional law. * * *"
>
> *Nashville, C. & St. L. Railway* v. *Browning*, 310 U. S. 362, 367, 84 L. Ed. 1254, 1257.

Had this case arisen concerning the assessments of building and loan associations and federal savings and loan associations in Kanawha County for the prior year (1940) as ascertained by the tax commissioner (R. 128-131, 134, 135—Krueger Exhibits Nos. 2-13, R. 160-164, 278-295), a clear case of discrimination between properties of the same kind and class in violation of the equal protection clauses of both the state and federal constitutions would have been presented, and the principles of the several cases cited in appellants' brief would have been applicable. However, as pointed out by the court below, those cases are inapplicable "as applied to the present controversy," the court expressly stating in its written opinion that "the cases last cited above are *distinguishable*" (R. 326). We reiterate that such cases are not applicable to the instant case as the record contains no evidence of discrimination in valuing a distinctive class and kind of property, namely, building and loan associations and federal savings and loan associations, for assessment of taxes for the year 1941 in Kanawha County or in any other county in the State of West Virginia. On the contrary, the presumption is that the tax officials have in good faith assessed all such properties in an equal and uniform manner, as required by law. *Sunday Lake Iron Co.* v. *Wakefield*, 247 U. S. 350, 62 L. Ed. 1154. In view of the fact that there is no showing of discrimination in valuing property pursuant to Sec-

tion 14a, for assessment purposes of the same kind and class as that of appellants in Kanawha County, West Virginia, for the year 1941, we submit that no substantial federal question is presented.

The finding of the court below is amply supported by the evidence that no showing of "clear and intentional discrimination" is disclosed in this case between the property of appellants and other species or types of property.

Appellants rely entirely upon the testimony of the deputy assessor of Kanawha County (Brief p. 13). In referring to intangibles, such as notes and accounts, such official stated that he allowed in this county a discount of 30% from the face value thereof. He apparently was not referring to notes belonging to state and national banks because no discounts were allowed in their assessments. He must not have been referring to notes belonging to small loan companies, as the evidence is uncontradicted that they were assessed at their true and actual value in Kanawha County for the year 1941, after examinations, conferences and detailed study for the express purpose of determining their true and actual value. He must have been referring to notes and accounts generally as a class as determined by the court below. Whether these notes and accounts as generally referred to by the deputy assessor have a true and actual value of 25%, 50%, 75% or 100% of the face value thereof is questionable. Whether such notes and accounts are secured or unsecured is not disclosed. Whether the makers thereof are solvent or insolvent is not shown. The true and actual value of the notes and accounts generally referred by the deputy assessor is clearly and definitely uncertain.

Notwithstanding these facts, appellants urge this court (1) to assume that notes and accounts generally were

assessed at 30% of their true and actual value, and (2) to assume that all property in Class I was so assessed in Kanawha County for the year 1941. They further urge that the capital of appellants consisting among other things of investment shares or stock as provided for in Section 14a should be assessed in the same manner as notes and accounts generally of an uncertain value, notwithstanding the fact that such shares or stocks admittedly have a true and actual value of 100 cents on the dollar and are guaranteed by the Federal government to an amount not exceeding $5,000.00. To permit a 30% deduction as contended for would clearly violate the equal protection clause of state and federal constitutions and would definitely constitute discrimination between the appellants and other businesses of like kind and character of the same class throughout Kanawha County and the State of West Virginia. Such a deduction in this case would likewise be discriminatory as between appellants on the one hand and state and national banks and small loan companies on the other hand. These facts, we submit, unquestionably sustain the findings of the court below and fully disclose the failure of appellants to show any clear and deliberate discrimination against appellants in the assessment generally of personal property in Kanawha County for the year 1941.

> " * * * The good faith of such officers (tax) and the validity of their actions are presumed; when assailed, the burden of proof is upon the complaining party. * * * "
>
> *Sunday Lake Iron Co.* v. *Wakefield*, 247 U. S. 350, 353, 62 L. Ed. 1154, 1156.

We deem it unnecessary to cite authorities of this Court to the effect that it is not the province of this Court to weigh the testimony; that a decision of the State Court on questions of fact ordinarily is not subject to

inquiry in this Court; and that such findings of fact by the State Court will be disturbed only where there is no evidence to support the findings. In this case the evidence unquestionably supports the findings of the Court below.

Even though certain other species of property may have been undervalued by the assessor for taxation purposes, appellants cannot complain in the absence of a showing of fraud, or a general intentional system of valuation designed to produce inequality. It is only in clear and hostile intentional discrimination against particular persons and classes, especially such as are of an unusual character, that the court will give relief.

There has been no showing in this case of any fraud or partiality on the part of the assessor or the state tax commissioner; no intention to discriminate between the property of the building and loan association and other species. For aught that appears, the assessor ascertained the value of the property of the building and loan associations in exact accordance with the statute, and other species of property, likewise using the methods prescribed by the legislature, in accordance with his best judgment.

The statutes relating to the valuation or assessment of money, notes, accounts, bonds, household goods, livestock and many other types of personal property owned by individuals set forth no specific method of ascertaining the value thereof which is comparable with the statute involved herein. Many factors are to be considered, and questions naturally arise upon which reasonable men may differ in ascertaining the true and actual value of many of the above mentioned species of property. Such fact is fully disclosed in this record by the several general methods employed by the Assessor of Kanawha County in ascertaining the value of the several

different species of property referred to. To apply the general methods used by the Assessor of Kanawha County in ascertaining true and actual value of these several species of property of an uncertain value to building and federal savings and loan associations of a certain value would, in effect, be substituting or trading a method other than the specific method provided by law, applicable to such associations, which statute "on its face * * * is perfectly fair and constitutional" as admitted in brief of appellants.

> "The unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination. * * * But a discriminatory purpose is not presumed, *Tarrance* v. *Florida*, 188 U. S. 519, 520, 47 L. Ed. 572, 573, 23 S. Ct. 402, there must be a showing of 'clear and intentional discrimination,' *Gundling* v. *Chicago*, 177 U. S. 183, 186, 44 L. Ed. 725, 728, 20 S. Ct. 633; see *Ah Sin* v. *Wittman*, 198 U. S. 500, 507, 508, 49 L. Ed. 1142, 1145, 1146, 25 S. Ct. 756; *Bailey* v. *Alabama*, 219 U. S. 219, 231, 55 L. Ed. 191, 197, 31 S. Ct. 145. * * * "
>
> " * * * It is not enough to establish a denial of equal protection that some are assessed at a higher valuation than others. The difference must be due to a purposeful discrimination, which may be evidenced, for example, by a systematic undervaluation of the property of some taxpayers and a systematic over-valuation of the property of others, so that the practical effect of the official breach of law is the same as though the discrimination were incorporated in and proclaimed by the statute. * * * "

Snowden v. *Hughes*, 88 L. Ed. (Adv. Op.) 347, 352.

CONCLUSION

We respectfully submit:

(1) The appeal should be dismissed for want of jurisdiction.

(2) The evidence is conclusive that appellants' property is not overvalued. No contention is made that appellants' property is singled out and valued differently for taxation, pursuant to Section 14a, Article 3, Chapter 11 of the Code of West Virginia, from that of other properties subject to said statute of like kind and character in the same group or class, by reason whereof no substantial federal question arises in this case.

(3) The finding of the Court below, that no showing of clear and intentional discrimination between different species of property is disclosed, is amply supported by the evidence.

Respectfully submitted,

IRA J. PARTLOW,
Attorney General of West Virginia.

KENNETH E. HINES,
Assistant Attorney General,

Counsel for Appellee.